Supreme Court, U. S.
FILED
JAN 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-637

RUSSELL CORPORATION,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF OF PETITIONER

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There are three patently erroneous statements of fact in the Government Brief that circumvent the issues raised in Petitioner's Writ of Certiorari. These are set forth as follows:

1. *Quantum Sought by Petitioner.* The Government's opening statement alleges that Plaintiff is seeking $891,-610 in damages. This is misleading. The Court of Claims confirms the stipulation that the $300,000 difference between the contract price and the fair market value of the Government's Property at the time of the breach

would be the agreed measure of damage. (Pet. 18a; Trp. 310)

2. *Up-dated Appraisal Complied with GSA Requirements.* The Government Brief alleges (p. 3) that the "appraisals did not comply with GSA requirements." This is in error. The up-dated appraisals by the independent contract appraiser recited in their contents that they did consider valuations based upon re-zoning for the highest and best use of the federal properties. These "updated contract appraisals ultimately were approved in the regional office and in the central office." (Pet. App. 13a) Certainly the GSA would not approve updated or any other type of an appraisal that did not comply with their regulations. The appraisals did comply with GSA Regulations.

3. *Both the Regional Administrator and the Administrator Approved the Agreement.* The Government contends (p. 4) that "no contract could be concluded without the Regional Administrator's assent." This is an erroneous conclusion, and does not acknowledge that as a matter of fact, the Regional Administrator did approve the Agreement when he sent it forward to the GSA Administrator for his approval. He not only approved it, but sent a telegram to the Administrator asking the Administrator asking the Administrator to expedite his approval. (Finding of Fact #17) The Court below finds that there was "compliance with the procedures required by the regulations in the numerous states of development and negotiation that transpired through the time plaintiff's offer was put in final form, * * *" (Pet. App. 8a) The GSA Administrator also approved the Agreement and through ...s Deputy Commissioner, directed the Regional Administrator to conclude the exchange. (Pet. App. 13a) The sole issue then becomes: Did the Regional Administrator have the power and authority to nullify

the approval of his superior officer, the GSA Administrator? (Pet. pp. 4-5) Petitioner contends to the contrary. Therefore, a valid Agreement existed.

WHEREFORE, having met all the terms and conditions of the GSA regulations, Petitioner contends an Agreement came into being upon the obtaining and approval of an up-dated appraisal indicating the valuation of the Petitioner's exchange property to be substantially equal to that of the Government, and that the breach thereof entitles Petitioner to the stipulated $300,000 damages. (Pet. App. 11a)

Respectfully submitted,

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